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IN THE
Supreme Court of the United States

OCTOBER TERM 1996

FAIRPORT INTERNATIONAL EXPLORATION, INC.,
Petitioner,

v.

THE SHIPWRECKED VESSEL KNOWN AS THE CAPTAIN LAWRENCE, *in rem,*
Respondent,

STATE OF MICHIGAN,
Intervenor,

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

REPLY BRIEF FOR THE PETITIONER

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When the Sixth Circuit handed down its decision, Respondent hailed it as a maritime law landmark. Now that Fairport International seeks relief from the Court, Respondent

suddenly sees the case as insignificant and factbound. Respondent's first impression was correct. The opinion below breaks with the Fourth Circuit to create an admiralty law conflict of national and international significance. Respondent has offered no reason in its Opposition why the Court cannot or should not grant certiorari to resolve the important issue presented.

1. Respondent's half-hearted suggestion that the issue in this case is fact-bound studiously avoids the point. Had the court below followed the Fourth Circuit's express abandonment rule, it would have been required to find that the *Captain Lawrence* was not an abandoned shipwreck, and accordingly that the State of Michigan did not have title under the Abandoned Shipwreck Act, 43 U.S.C. §§ 2101-2106 (1988).

This is because there was not even a scintilla of evidence of an express abandonment by Petitioner's privies in title. The State does not contend, and there is no evidence in the record that would support, that the owners expressly or affirmatively abandoned title to the *Captain Lawrence.* Accordingly, under the Fourth Circuit's express abandonment rule, the District Court had no discretion in the matter and was required to make a finding of non-abandonment. But for the fact that this suit was tried in the Fourth Circuit rather than the Sixth Circuit, the result would have been different.

Respondent's resort to the Submerged Lands Act, 43 U.S.C. § 1301 et seq. and Michigan statutes granting the State control over its bottom lands ignores the nature of this action. This is not an action asserting rights in natural resources on the seabed but rather a claim for rights in a cultural deposit. Accordingly, the Abandoned Shipwreck Act controls. The very purpose of the Act, as shown by its legislative history, was to eliminate the morass of litigation and confusing creating by a tangle of prior state and federal laws.

If the *Captain Lawrence* is not abandoned, the Respondent has no colorable claim to the shipwreck. While the State may have a claim to natural resources, its rights to cultural deposits is governed by the Abandoned Shipwreck Act.

Under the rule in the Fourth Circuit, only an "express declaration abandoning title" can suffice to prove abandonment any time a purported owner claiming title appears. It is the court of appeals' legal rule governing abandonment--not a factual determination--that is at issue here.

2. Respondent's brief does not, and cannot, deny that there is conflict among the circuits on the definition of abandonment. Both the Sixth and the Ninth Circuits have openly acknowledged the circuit conflict and have rejected the Fourth Circuit's express abandonment rule, and have instead applied the inferred abandonment theory. Leading commentators have also noted the conflict among the cases. 3 A. M. Norris, *Benedict on Admiralty*, § 158 (7th Cir. 1993), T. Shoenbaum, *Admiralty and Maritime Law* §§ 15-7 (1987); Edelman, *Who Gets Treasure Recovered From the Sea?* N.Y.L.J. Dec. 4, 1992 at 3, 4 (conflict will need resolution by the Supreme Court."); Giesecke, *To Be or Not To Be Abandoned,* Sea Technology, Jan. 1993 at 93.

One can imagine the confusion, indeed, the chaos, of having 50 separate definitions of abandonment facing a court which must apply the ASA. Federal admiralty jurisdiction would be balkanized as federal courts struggled to determine which of the State's definitions of abandonment it would apply. The uniform exercise of this jurisdiction is a question of significant enough importance that this Court should supply a uniform federal rule as to what definition of maritime abandonment federal courts must apply in cases under the ASA.

3. The importance of the legal issue raised here has been amply demonstrated by the many filings submitted to the Court in this and earlier cases. The development of new recovery methods has vastly multiplied the practical significance of this area of the law. *See generally Deepest Wrecks Now Visible in Undersea Cameras*, N.Y. Times, Feb. 2, 1993, at B1. The conflict among the federal circuits, and resulting confusion in the law, will not only chill private exploration efforts but also adversely affect the interests.

Respondent's attempt to diminish the significance of this conflict among the circuits is inconsistent with the uniform nature of federal admiralty law. The forum shopping and confusion that result from this conflict among the circuits is precisely the reason for reviewing this matter on certiorari and providing guidance to the courts on certiorari.

Respondent's ostensible concession, that the Court should pass over this matter until its decision in the *Brother Jonathan*, assumes that the Court will definitively address the abandonment issue in that case. Since the Eleventh Amendment is also an issue in that case, it is possible that the Court may decide that appeal without resolving the conflict among the circuits on the maritime definition of abandonment. It is vital that the Court grant certiorari in this case to assure that this conflict is finally resolved.

The conflict among the circuits threatens both the uniformity of the law of admiralty and the viability of emerging deep sea exploration and recovery initiatives. The ASA divests a federal court of jurisdiction in all cases where a marine salvager presents a claim involving a wreck to which the ASA applies. It is imperative for the uniform operation of federal law that all federal courts apply the ASA consistently. Thus, all federal courts must use the same standards when determining if the ASA applies to a wreck under litigation. Since that determination depends on the definition of

"abandonment," federal courts must have a uniform definition of abandonment from which to proceed.

For the reasons discussed above, this Court should grant Fairport's petition and issue a writ of certiorari to the United States Sixth Circuit Court of Appeals for the purposes of (1) reviewing that court's definition of abandonment under the Abandoned Shipwrecks Act and (2) promulgating a uniform, consistent rule regarding the test for abandonment, a test crucial to the uniform exercise of federal admiralty jurisdiction.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be granted.

Respectfully Submitted,

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